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**Attorneys for Plaintiff**

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

NORMA ROTHMAN, individually, and  
on behalf of all others similarly situated,

Plaintiff,

v.

GENERAL NUTRITION  
CORPORATION a Pennsylvania  
corporation, and DOES 1-500,

Defendants.

Case No.: CV11-03617 SJO (RZx)  
*Assigned for all purposes to the  
Honorable S. James Otero*

**CLASS ACTION**

**PLAINTIFF'S NOTICE OF MOTION  
AND MOTION FOR  
RECONSIDERATION OF COURT'S  
NOVEMBER 17, 2011 ORDER  
DENYING MOTION TO CERTIFY  
CLASS; MEMORANDUM OF  
POINTS AND AUTHORITIES**

Date Action Filed: March 16, 2011  
Trial Date: April 24, 2012  
Courtroom: 1

Date of Hearing: January 3, 2012  
Time: 10:00 a.m.  
Courtroom: 1

**TO THE COURT AND ALL PARTIES OF RECORD:**

PLEASE TAKE NOTICE THAT on Tuesday, January 3, 2012 at 10:00 a.m.,  
or as soon thereafter as it may be heard in Courtroom 1 located at 312 N. Spring  
Street, Los Angeles, CA 90012, before the Honorable S. James Otero, Plaintiff,  
Norma Rothman ("Rothman" or "Plaintiff"), will and hereby does move for an order

1 for reconsideration of the Court's November 17, 2011 order denying class  
2 certification.

3 Plaintiff brings this motion pursuant to Local Rule 7-18, on the grounds that  
4 this Court did not consider material evidence which supports class certification.

5 Pursuant to Local Rule 7-3, and more fully stated in the accompanying  
6 Declaration of Christopher P. Ridout, the parties have met and conferred  
7 telephonically regarding this motion. The most recent conversation took place on  
8 November 18, 2011. The parties could not reach a resolution to the issues raised in  
9 this Motion.

10 Plaintiff bases this Motion on this Notice, the Memorandum of Points and  
11 Authorities filed herewith, the Declaration of Christopher P. Ridout, the pleadings  
12 and papers on file herein and on such other matters as the parties may present to the  
13 Court at the time of the hearing.

14  
15 Respectfully submitted,

16 RIDOUT & LYON, LLP

17  
18 Dated: November 29, 2011 By: /s/ Christopher P. Ridout  
19 Christopher P. Ridout, CA Bar No. 143931  
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26  
27 **Attorneys for Plaintiffs**  
28

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## MEMORANDUM OF POINTS AND AUTHORITIES

### I. INTRODUCTION

Plaintiff, Norma Rothman (“Rothman” and/or “Plaintiff”) respectfully seeks reconsideration of this Court’s November 17, 2011 Order Denying Motion to Certify Class (the “Order”). (Docket #46.) In denying Plaintiff’s Motion for Class Certification, this Court did not consider, and could not have considered, material evidence that supports class certification. In this regard, the Order, issued just one (1) hour and twenty-one (21) minutes following the electronic filing of Plaintiff’s Reply memorandum (Docket #44), was electronically filed *before* confidential evidence demonstrating numerosity, commonality, and typicality could be manually lodged with this Court.<sup>1</sup> Moreover, because this material evidence was not produced by Defendant, General Nutrition Corporation (“GNC”) until a date *after* the filing of her motion to certify class, Plaintiff was not able to proffer this evidence to this Court for consideration until the filing of her reply memorandum.

Finally, class counsel’s citation to the Ninth Circuit’s decision in *Dukes v. Wal-Mart, Inc.*, 509 F.3d 1168 (9<sup>th</sup> Cir. 2007) was a result of an inadvertent mistake made as a result of counsel’s efforts to comply with the strict (and somewhat ambiguous) time parameters set forth in Local Rule 23-3.

Accordingly, Plaintiff respectfully submits that this Court grant this Motion for Reconsideration.

### II. PROCEDURAL BACKGROUND

On March 16, 2011, Plaintiff filed her complaint in California Superior Court against GNC alleging among other claims violation of the Song-Beverly Credit Card Act of 1971 (“Song-Beverly” or “the Act”), Civil Code § 1747 *et seq.*

<sup>1</sup> This Court determined that the numerosity prerequisite of Rule 23(a) was satisfied. (Docket #46 at p.6.)

1 On April 27, 2011, Defendant filed its Notice of Removal to the United States  
2 District Court for the Central District of California pursuant to the Class Action  
3 Fairness Act of 2005 ("CAFA"), 28 U.S.C. §§ 1332(d) and 1453(b).

4 On May 4, 2011, and pursuant to Local Rule 7-3, the parties met and  
5 conferred regarding the claims set forth in Plaintiff's complaint. As a result of this  
6 meet and confer, Plaintiff agreed to file an amended complaint.

7 On May 27, 2011, Plaintiff filed her First Amended Complaint. (Docket #7.)

8 On June 8, 2011 and June 9, 2011, and pursuant to Local Rule 7-3, the parties  
9 met and conferred regarding the claims set forth in Plaintiff's First Amended  
10 Complaint. In this regard, Defendant requested that Plaintiff amend her operative  
11 complaint to include additional information regarding the subject transaction giving  
12 rise to Plaintiff's claims of violation of the Act. Rather than to engage in  
13 unnecessary law and motion, Plaintiff agreed to file a Second Amended Complaint.

14 On June 22, 2011, this Court entered its "Order re Stipulation to File Second  
15 Amended Complaint and Establish Responsive Date." (Docket #15.) In addition to  
16 granting leave to file a Second Amended Complaint, this order set forth that "the  
17 date of the filing of the Second Amended Complaint will provide the operative date  
18 for filing a Motion for Class Certification pursuant to Local Rule 23-3." (Docket  
19 #15 at 1:24-28.)

20 On June 29, 2011, Plaintiff filed her Second Amended Complaint. (Docket  
21 #18.) Accordingly, pursuant to this Court's June 22, 2011 Order, the deadline within  
22 which to file the motion for certification was September 29, 2011.

23 On July 6, 2011, Defendant filed its Answer to Complaint. (Docket #19.)

24 On July 11, 2011, this Court conducted a Scheduling Conference. (Docket  
25 #21.) During the Scheduling Conference, this Court inquired whether the filing of  
26 the Second Amended Complaint was an attempt to extend the deadline set forth in  
27  
28



1 Local Rule 23-3.<sup>2</sup> (Docket #22 at 4:6-7.) Counsel for Plaintiff responded,  
2 “[a]bsolutely not.” (Docket #22 at 4:8.) The Court confirmed that the deadline  
3 within which to file the motion for certification was September 29, 2011. (Docket  
4 #22 at 11:12-17.)

5 On August 17, 2011, Plaintiff served Defendant with Interrogatories and  
6 Requests for Production of Documents. (Declaration of Christopher P. Ridout  
7 (“Decl. of Ridout”) at Exhibits “A” and “B,” respectively.) This discovery was  
8 narrowly tailored to address Defendant’s policies and practices regarding the request  
9 and recordation of Personal Identification Information (“PII”).

10 On September 16, 2011, Defendant served its Answers to Interrogatories, and  
11 its Responses to Requests for Production of Documents. (Decl. of Ridout at Exhibits  
12 “C” and “D” respectively.) Defendants refused to produce any documents  
13 responsive to Plaintiff’s requests until this Court had entered a Protective Order.  
14 (Decl. of Ridout at ¶6.)

15 On September 22, 2011, the parties submitted to this Court a Stipulation for  
16 Protective Order. (Docket #24.)

17 On September 29, 2011, Plaintiff filed a motion to certify a class on behalf of  
18 herself and the putative class as defined in the Second Amended Complaint. (Docket  
19 #25.) As a professional courtesy to counsel for Defendant, Plaintiff set the hearing  
20 date for this motion so that Defendant had the opportunity to take the deposition of  
21 Plaintiff in advance of the due date for filing its opposition. (Decl. of Ridout at ¶7.)

22 On September 30, 2011, the Magistrate Judge denied the parties’ proposed  
23 Stipulation Protective Order. (Docket #26.)

24  
25  
26 <sup>2</sup> Local Rule 23-3 provides, in part: “Within 90 days after service of a pleading  
27 purporting to commence a class action..., the proponent of the class shall file a  
28 motion for certification that the action is maintainable as a class action, unless  
otherwise ordered by the Court.”

1 On October 10, 2011, Defendant submitted to the Magistrate Judge a revised  
2 proposed Stipulation for Protective Order which covered the specific documents to  
3 be produced by Defendant. (Docket #27.)

4 On October 11, 2011, the Magistrate Judge entered the revised Stipulated  
5 Protective Order. (Docket #28.)

6 On October 14, 2011, Defendants produced documents bearing Bate numbers  
7 to GNC000001-GNC002091. (Decl. of Ridout at ¶8.)

8 On November 17, 2011, at 12:25 pm PST, Plaintiff filed her Reply in Support  
9 of Motion to Certify Class. (Docket #44.) Having been marked "CONFIDENTIAL"  
10 by Defendants pursuant to the Protective Order, Exhibits "A," "B," and "C" could  
11 not be filed electronically with this Court. Accordingly, these documents were to be  
12 lodged manually with the Court.

13 On November 17, 2011, at 1:46 pm PST, this Court issued its Order Denying  
14 Motion to Certify Class. (Docket #46.)

15 On November 17, 2011, at 3:05 pm PST, Exhibits "A," "B" and "C" were  
16 lodged with this Court under seal pursuant to the terms of the Protective Order.  
17 (Docket #47; Decl. of Ridout at ¶9, Exhibit "E".)

### 18 III. ARGUMENT

#### 19 A. This Court Failed to Consider Material Facts Presented 20 That Demonstrate Defendant's Policy of Collecting ZIP 21 Codes From Its Customers

22 United States District Court for the Central District of California Local Rule 7-  
23 18 provides in part:

24 "A motion for reconsideration of the decision on a motion may be  
25 made only on the grounds of (a)..., or (b)..., or (c) a manifest  
26 showing of a failure to consider material facts presented to the Court  
27 before such decision."  
28



1  
2                   **1.     The Order**

3           This Court repeatedly noted in its Order that Plaintiff failed to proffer  
4 evidence in support of her claim that Defendant had engaged in a common course of  
5 conduct requesting and recording of consumers' PII in violation of the Act.  
6 Specifically, although it identified that the numerosity requirement of Rule 23(a)  
7 had been satisfied, the Court ruled, in part, that the commonality and typicality  
8 requirements were unsupported by evidence.

9                   **a.     Commonality**

10          On commonality, this Court appears to rely solely on Plaintiff's initial  
11 memorandum of points and authorities ruling, in part:

12                "There is nothing before the Court to suggest that Defendant  
13 has a 'common course of conduct' that it applied throughout its  
14 stores and all its customers. Without a showing that there was a  
15 universally-applied procedure that requested personal  
16 information from consumers, Plaintiff cannot establish the  
17 commonality requirement of Rule 23(a)." (Docket #46 at 7.)

18          This Court further noted, in part: "If (unlike here) plaintiff proffers evidence  
19 that a defendant corporation does have a uniform policy of requesting personal  
20 information from customers and that policy is followed as a matter of routine, the  
21 commonality might be met." (Docket #46 at FN 2.)

22                   **b.     Typicality**

23          Similar to its analysis regarding the commonality requirement, this Court ruled  
24 in part: "As discussed above, Plaintiff has presented no evidence that there was, in  
25 fact, a 'common scheme.'" (Docket #46 at p. 8.)

26                   **2.     The Subject Evidence**

27          Following the filing of the initial motion to certify class, and following the  
28 entry of the Protective Order, Defendant produced thousands of pages of documents

responsive to Plaintiff's discovery. Among the documents produced by Defendant were three respective manuals: a Retail Operations Manual; a Point of Sale Register Manual; and a Franchise Operations Manual. (*See* Exhibits "A," "B" and "C" to the Supp. Decl. of Ridout.) (Docket #47.) Each of these manuals were marked "CONFIDENTIAL," and filed manually in support of Plaintiff's reply brief in support of certification. (Docket #45.) Notably, this Court issued its Order prior to the time that these manuals were lodged with the Court.

**a. Exhibit "A"-GNC's Retail Operations Manual**

The Retail Operations Manual identifies Defendant's policy of requesting and recording ZIP codes in connection with credit card transactions. (*See* Supp. Decl. of Christopher P. Ridout at ¶5.) (Docket #44, 2.) This manual stressed that employees were to understand what "the consequences" were if the policies were not followed. (*Id.* at Exhibit A (filed under seal), p. 4-1.)

**b. Exhibit "B"-GNC's Point of Sale Register Manual**

The Point of Sale Register Manual confirms that Defendant's POS registers are programmed to prompt employees to request and record customers' ZIP codes *in connection with each and every credit card transaction*. (*Id.* at ¶6.) (Docket #44, 2.) This manual explains the screen prompt that appears on the POS register monitor that requests the customer's ZIP code, and provides specific instructions regarding the use of that specific prompt. (*Id.* at Exhibit B (filed under seal).)

**c. Exhibit "C"-GNC's Franchise Operations Manual**

The Franchise Operations Manual specifically requires franchise stores to purchase POS registers from GNC and requires strict adherence to GNC's POS register programming guidelines. Similar to the Retail Operations Manual, this manual also stressed that franchise employees were to understand what "the consequences" were if the policies were not followed. (*Id.* at Exhibit A (filed under seal), p. 4-1 and Exhibit C (filed under seal).)

///

1                   **3. This Court Could Not Have Considered the Subject Evidence**  
 2                   **As it Issued Its Order Prior to the Receipt of the Manually**  
 3                   **Filed Documents**

4           This Court set September 29, 2011 as the deadline within which Plaintiff was  
 5 to file her motion to certify class.

6           Defendant did not produce documents responsive to Plaintiff's written  
 7 discovery until October 14, 2011, only after the Magistrate Judge had entered the  
 8 Protective Order. Documents included within those produced were three respective  
 9 manuals: a Retail Operations Manual; a Point of Sale Register Manual; and a  
 10 Franchise Operations Manual.

11           On November 17, 2011, at 12:25 pm PST, Plaintiff filed her Reply in Support  
 12 of Motion to Certify Class. (Docket #44.) Having been marked "CONFIDENTIAL"  
 13 by Defendants pursuant to the Protective Order, the Retail Operations Manual; the  
 14 Point of Sale Register Manual; and the Franchise Operations Manual, marked as  
 15 Exhibits "A," "B" and "C" to the Declaration of Ridout, respectively, could not be  
 16 filed electronically with this Court.

17           On November 17, 2011, at 1:46 pm PST, this Court issued its Order Denying  
 18 Motion to Certify Class. (Docket #46.)

19           On November 17, 2011, at 3:05 pm PST, Exhibits "A," "B" and "C" were  
 20 lodged with this Court under seal pursuant to the terms of the Protective Order.  
 21 (Docket #47; Decl. of Ridout at ¶9.)

22           As the Retail Operations Manual; the Point of Sale Register Manual and the  
 23 Franchise Operations Manual, were not lodged with this Court until only after the  
 24 issuance of its Order, Plaintiff respectfully submits that this Court could not have  
 25 considered the proffered Retail Operations Manual, Point of Sale Register Manual  
 26 and Franchise Operations Manual in connection with its Order.

27   ///

28   ///

#### 4. The Subject Evidence is Material to Defendant's Violation of the Song-Beverly Act

The subject evidence is material to the issues addressed by this Court in its Order, specifically as to the commonality and typicality requirements of Rule 23(a). In this regard, this Court properly identified that: "Under the Act, corporations may not 'request or require' any 'personal identification information' from a consumer 'as a condition to accepting the credit card as payment in full for goods and services' and then cause that personal identification information to be 'written, or otherwise record[ed].'" (Docket #46 at p.2; *see also* Cal. Civ. Code § 1747.08(a)(2).) This is consistent with the California Supreme Court's unanimous decision in *Pineda* which held that "requesting and recording a cardholder's zip code, without more, violates the [California] Credit Card Act." (*Pineda v. Williams-Sonoma Stores, Inc.* (2011) 51 Cal.4th 527-28.) "The legislative history of [the Act] in general, and section 1747.08 in particular, demonstrates the Legislature intended to provide robust consumer protections by prohibiting retailers from soliciting and recording information about the cardholder that is unnecessary to the credit card transaction." (*Pineda*, 535-36.) In *Pineda*, the California Supreme Court specifically considered that the statute was amended to prohibit a "request" for personal identification information (in addition to the original prohibition on "requiring as a condition to accepting the credit card") to avoid the very defense asserted here:

[T]he 1990 version of former section 1747.8 forbade businesses from "requir[ing] the cardholder, as a condition to accepting the credit card, to provide personal identification information..." (Stats. 1990, ch. 999, § 1, p. 4191.) In 1991, the provision was broadened, forbidding businesses from "[r]equest[ing], or requir[ing] as a condition to accepting the credit card..., the cardholder to provide personal identification information..." (Stats. 1991, ch. 1089, § 2, p. 5042, *italics added*.) "The obvious purpose of the 1991 amendment was to prevent retailers from 'requesting' personal identification information and then matching it with the consumer's credit card number." (*Florez v. Linen 'N Things*, 108 Cal.App.4th at 453.) "[T]he 1991 amendment prevents a retailer from making an end-run around the law by claiming the customer furnished personal identification data 'voluntarily.'" (*Ibid.*) That the Legislature so expanded the scope of former section 1747.8 is further evidence it intended a broad consumer protection statute.

1 *Pineda*, 51 Cal.4<sup>th</sup> at 534-535.

2 Defendant belatedly produced the Retail Operations Manual, Point of Sale  
3 Register Manual and Franchise Operations Manual, which are material to the issues  
4 addressed by this Court in its Order, specifically as to the commonality and typicality  
5 requirements of Rule 23(a). First, Defendant's Retail Operations Manual identifies  
6 its policy of requesting and recording ZIP codes in connection with all credit card  
7 transactions. (*See* Supplemental Declaration of Christopher P. Ridout ("Supp. Decl.  
8 of Ridout") at ¶5, Docket #44, 2.) The Operations Manual further requires that  
9 employees understand "the consequences" of failing to adhere to the policies and  
10 procedures. (*Id.*)

11 Second, pursuant to the policies espoused in Defendant's Point of Sale  
12 Register Manual, Defendant's POS registers are specifically programmed to prompt  
13 users to request and record customers' ZIP codes *in connection with each and every*  
14 *credit card transaction*. (*Id.* at ¶6 (Docket #44, 2).) This manual explains the  
15 prompt that appears on the POS register screen and promotes uniformity amongst  
16 employees to obtain PII from each of their customers.

17 Third, the Franchise Operations Manual specifically requires franchise stores  
18 to purchase POS registers from GNC and requires strict adherence to GNC's POS  
19 register programming guidelines. Similar to the Retail Operations Manual, franchise  
20 employees were to understand what "the consequences" were if the policies were not  
21 followed. (*Id.* at p. 4-1) Therefore, it is of no consequence that Plaintiff may have  
22 been subjected to Defendant's policy at a franchised store, as all GNC franchise  
23 operators must comply with all GNC POS operating guidelines. (*Id.* at ¶ 7.)

24 In consideration of the foregoing, Plaintiff respectfully submits that  
25 Defendant's Retail Operations Manual, the Point of Sale Register Manual, and the  
26 Franchise Operations Manual specifically demonstrate that Defendant had, in fact,  
27 engaged in a common course of conduct of requesting and recording consumers' PII  
28



1 in violation of the Act, and that the commonality and typicality requirements of Rule  
2 23(c) have been satisfied.

3 **5. Counsel Respectfully Submits That They Are**  
4 **Adequate to Represent the Class**

5 Local Rule 23-3 specifically states “[w]ithin 90 days after *service* of a  
6 pleading purporting to commence a class action..., the proponent of the class shall  
7 file a motion for certification that the action is maintainable as a class action, unless  
8 otherwise ordered by the Court.” (Emphasis added.) This Local Rule has been  
9 subject to multiple interpretations including, but not limited to, those of this Court.<sup>3</sup>  
10 (See *Verner v. Swiss II, LLC* 2010 WL 99084 (C.D. Cal.); *Seig v. Yard House* 2007  
11 WL 6894503 (C.D. Cal.); *Misra v. Decision One Mortgage Company, LLC* 2008 WL  
12 7242774 (C.D. Cal.).)<sup>4</sup>

13 This action was filed on March 14, 2011, and thereafter removed to District  
14 Court on April 27, 2011. Due to the strict time restrictions set forth in Local Rule  
15 23-3, class counsel internally calendared periodic dates within which to draft  
16 Plaintiff’s motion to certify to ensure compliance with Local Rule 23-3. These dates  
17 predated the United States Supreme Court’s decision in *Wal-Mart Stores, Inc. v.*  
18 *Dukes*, ---U.S.---131 S.Ct.2541, 2551 (2011), which was issued on June 20, 2011.  
19 (See Decl. of Ridout at ¶10.) In an abundance of caution, counsel for Plaintiff began  
20 drafting their motion for certification well before the earliest date that could be  
21 argued to trigger the 90 day time limitation in Local Rule 23-3, or June 24, 2011 (90  
22 days from the service of the original complaint). (*Id.*) Although the parties  
23 eventually stipulated to extend the Local Rule 23-3 deadline to a date beyond that on  
24 which the Supreme Court’s ruling in *Dukes* was issued, due to an oversight the prior  
25

26 <sup>3</sup> See Docket #22 at 4:17 19.

27 <sup>4</sup> This Court suggested that the filing of a Second amended Complaint was an  
28 attempt to side-step the requirements of Local Rule 23-3.



1 cites to the Ninth Circuit decision remained in the brief that was ultimately filed with  
2 this Court. (*Id.*)

3 Class Counsel submits that the citation of the Ninth Circuit's decision in  
4 *Dukes v. Wal-Mart*, 509 F.3d 1168 (9<sup>th</sup> Cir. 2007) was a result of an inadvertent  
5 mistake made as a result of counsel's efforts to comply with the strict time  
6 parameters set forth in Local Rule 23-3. (Decl. of Ridout at ¶10.) Counsel sincerely  
7 apologizes to this Court and counsel for Defendant for any confusion caused as a  
8 result of this inadvertent mistake (*Id.*)

9 Finally, as further evidence of the adequacy of counsel, counsel has attached  
10 orders issued by other United States District Court Judges approving the adequacy of  
11 counsel. (Decl. of Ridout at ¶11, 12 and 13 Exhibits "F," "G," and "H.")

#### 12 **B. This Court Has Discretion to Alter an Inadequate Class Definition**

13 This Court has the discretion to alter an inadequate class definition.  
14 (*Lamumba Corp. v. City of Oakland*, 2007 WL 3245282, at \*5 (N.D. Cal., November  
15 2, 2007).) In its Order, this Court noted that the Proposed Class that Plaintiff sought  
16 to certify would include individuals who have not suffered a violation of the Act.  
17 (*See* Order at 4-5.)

18 Subject to any additional tailoring by this Court, Plaintiff submits that the  
19 following class definition would exclude the groups of proposed class members  
20 Defendants have identified an exemption for:

21 "All persons who engaged in a credit card transaction during the last  
22 one year at one of Defendant's retail stores located in the State of  
23 California during which their ZIP code was required or requested, and  
24 was recorded by Defendants manually or electronically. Excluded  
25 from this definition are all transactions wherein a person's ZIP code  
26 was provided in connection with enrollment in Defendant's "Gold  
27 Card" program at the time of the transaction, or wherein a person's  
28

1 ZIP code was provided in connection to the Defendant's shipping or  
2 delivering any goods or services."

3 **C. Plaintiff's Claims Satisfy The Threshold Requirements for Class**  
4 **Certification Under Rule 23(b)(3)**

5 In its Order Denying Motion To Certify Class (Docket #46), this Court noted  
6 that in light of its rulings regarding Rule 23(a), it need not analyze whether threshold  
7 requirements exist under Rule 23(b)(3). (Docket #46 at p. 9.) Plaintiff submits that  
8 the above referenced confidential evidence demonstrating numerosity,  
9 commonality, and typicality, also demonstrates that common issues predominate  
10 under Rule 23(b)(3).

11 Questions that are common to the class predominate over individual questions  
12 where a plaintiff alleges a common course of conduct of misrepresentations,  
13 omissions, and other wrongdoing that affected all the class members in the same or  
14 similar manner. (*Blackie v. Barrack*, 524 F.2d 891, 905-908 (9th Cir. 1975), *cert.*  
15 *denied*, 429 U.S. 816 (1976).) Moreover, differences among class members  
16 concerning the amount of their individual damages, which are unavoidable in class  
17 action litigation, do not prevent a claim from proceeding as a class action. (*Id.*)

18 In this matter, common issues of law and fact readily predominate. The  
19 gravamen of the Plaintiff's action, Defendant's illegal request and recording of PII in  
20 connection with credit card transactions, hinges on uniform theories of liability and  
21 arises from a common and uniform set of facts. First, Defendant's Retail Operations  
22 Manual identifies its policy of requesting and recording ZIP codes in connection  
23 with all credit card transactions. (See Supplemental Declaration of Christopher P.  
24 Ridout ("Supp. Decl. of Ridout") at ¶5, Docket #44, 2.) The Operations Manual  
25 further requires that employees understand "the consequences" of failing to adhere to  
26 the policies and procedures. (*Id.*)

27 Second, pursuant to the policies espoused in Defendant's Point of Sale  
28 Register Manual, Defendant's POS registers are specifically programmed to prompt

1 users to request and record customers' ZIP codes *in connection with each and every*  
 2 *credit card transaction*. (*Id.* at ¶6 (Docket #44, 2).) This manual explains the  
 3 prompt that appears on the POS register screen and promotes uniformity amongst  
 4 employees to obtain PII from each of their customers.

5 Third, the Franchise Operations Manual specifically requires franchise stores  
 6 to purchase POS registers from GNC and requires strict adherence to GNC's POS  
 7 register programming guidelines. Similar to the Retail Operations Manual, franchise  
 8 employees were to understand what "the consequences" were if the policies were not  
 9 followed. (*Id.* at p. 4-1) Therefore, it is of no consequence that Plaintiff may have  
 10 been subjected to Defendant's policy at a franchised store, as all GNC franchise  
 11 operators must comply with all GNC POS operating guidelines. (*Id.* at ¶ 7.)

12 Resolution of Defendant's liability to one class member will provide resolution  
 13 for all class members.

#### 14 IV. CONCLUSION

15 In consideration of the foregoing, Plaintiff submits that this motion for  
 16 reconsideration of this Court's Order be granted in its entirety.

17  
 18 Respectfully submitted,

19  
 20 RIDOUT & LYON, LLP

21 Dated: November 29, 2011 By: /s/ Christopher P. Ridout  
 22 Christopher P. Ridout, CA Bar No. 143931  
 23 Devon M. Lyon, CA Bar No. 218293  
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**Attorneys for Plaintiff**

**CERTIFICATE OF SERVICE**

**RE: ROTHMAN v. GENERAL NUTRITION CORPORATION**  
**(CV11-03617 SJO (RZx))**

I certify that on November 29, 2011, I caused to be served a true and correct copy of the document:

**PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR  
 RECONSIDERATION OF COURT'S NOVEMBER 17, 2011 ORDER  
 DENYING MOTION TO CERTIFY CLASS; MEMORANDUM OF POINTS  
 AND AUTHORITIES**

upon all parties by ECF Notification of Filing to the following address(es):

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